



Answers to Frequently Asked Questions from Courts

What is the MIDC doing?

The MIDC is currently working to implement the approved compliance plans for all adult criminal indigent defense systems statewide. The compliance plans cover the MIDC's standards for indigent defense. This is being done through approximately \$84 million in grants funded by the State that will be provided to local systems. Most of the funds are for payments to assigned counsel. The plans are designed to make significant improvements to the system for people who are indigent and charged with crimes in Michigan. Find out more about the MIDC, including the full text of the standards, on our website at www.michiganidc.gov.

When does the MIDC grant start?

Local systems are required to come into compliance with their approved plans within 180 days of receiving grant funds from the MIDC. Most systems will receive initial payments this fall; if so, compliance will be required at some point in the spring of 2019.

How long will it last?

The MIDC's Standards are permanent. The MIDC Act requires the state to pay for any increased funding that is necessary to meet minimum standards. The Act requires local indigent defense systems to submit grant plans every year to receive funding to meet the standards. A local system's duty of compliance is dependent on this funding. MCL 780.993(6-7), MCL 780.997(2).

Who submitted the plan for my court?

Per the MIDC Act, the local indigent criminal defense system, or the local unit of government that funds the delivery of indigent defense (e.g. county, city), is responsible for coming into compliance with the MIDC Standards. It is likely that either your county or city administrator or commission submitted your plan, or one was submitted on their behalf by a court official.

Will there be more standards?

Yes. The MIDC has proposed four additional standards that are pending approval from the Licensing and Regulatory Affairs Department (LARA). You can read the standards on our website at www.michiganidc.gov. There may be other standards proposed in the future.

My court will need to hire employees to implement our compliance plan, when can I post for jobs, hire employees, and when can they start work?

You can start the process now. The effective date of the grant will be October 1, 2018. You may use grant funds to pay for any costs reflected in your budget that occurred on October 1 or after, regardless of when your actual grant contract is signed.

What happens if, while implementing our compliance plan, we determine that we need to make changes to the plan or the cost analysis?

The MIDC is mindful that many systems will want or need to adjust their plan or budget throughout the grant cycle. Systems can amend their plans or budgets throughout the grant cycle; however, there are different processes for making amendments depending on the type of change needed. Please contact your Regional Manager for guidance with any adjustments. More information is available in the MIDC Guide for Reporting found on our website: www.michiganidc.gov/grants.

My court uses a fee schedule. Will that change?

Possibly. Each funding unit decides how its attorneys will be paid. Some funding units are maintaining their existing payment methods, while others are making changes based on the new processes created by the standards. Please refer to your plan or contact your Regional Manager if you are unaware if or how your payment schedules will change.

Do we have to change our attorney invoices?

Most likely yes. Each system is required to provide a report on the expenses incurred for implementing the plan for indigent defense delivery. All attorney services must be tracked, including the time for each case, even in funding units where payment is not calculated on an hourly rate. The MIDC has provided sample attorney invoice forms on its website for local systems that are not already capturing this information: www.michiganidc.gov/grants.

I hear that Standard 5 means the court cannot work on this project anymore, is this true?

Standard 5 requires that indigent criminal defense services are independent of the judiciary. Pursuant to the Standard, “the court’s role shall be limited to: informing defendants of right to counsel; making a determination of indigency and entitlement to appointment; and, if deemed eligible for counsel and absent a valid waiver, referring the defendant to the appropriate agency.” However, judges and the court are permitted and encouraged to contribute information and advice concerning the delivery of indigent criminal defense services, including their opinions regarding the competence and performance of attorneys providing such services. Standard 5 is pending approval from the Licensing and Regulatory Affairs Department (LARA) and systems are not yet required to come into compliance with it.

What do the MIDC's first standards cover?

Standard 1 - Training: All attorneys accepting assignments must complete 12 hours of continuing legal education every calendar year. New attorneys must complete a multi-day skills training course.

What is the court responsible for?

Each funding unit is responsible for ensuring that any attorney that is appointed on an adult indigent case has completed the required 12 hours of CLE. Most funding units incorporated language into their compliance plans that require the attorneys to notify the MIDC upon completion of a training seminar. The funding unit/court would then be required to show that this requirement has been satisfied by all attorneys. There will be a database created for the attorneys to submit their training certificates; all courts will have access to this database.

When do the attorneys need to complete their training for compliance?

Credits need to be completed each calendar year and will be reported to the Michigan Supreme Court by the MIDC pursuant to MIDC Standard 1. For this first year, attendance will count if the training was held between October 1, 2018, and December 31, 2019.

Standard 2- Meeting with clients: Attorneys accepting court appointments must meet with their clients (who are in local custody) within three business days from the assignment. The meeting must be in a confidential setting to the extent reasonably possible.

What if there isn't a confidential space for attorneys to meet with their client?

Some systems are planning construction to create confidential spaces in courthouses or jails, and that transition will take some time. Best practices dictate that all attorneys can meet confidentially with their clients in a private setting. In circumstances where this is not always possible, the expectation is that there will be accommodations made to provide the best solution considering the circumstances.

What can the court do to help facilitate these meetings?

In many systems, courts can assist by promptly appointing counsel and timely notifying counsel of that appointment. Additionally, the court can assist in reforming the discovery process so that counsel has access to all available discovery materials as soon as possible. One such reform is to use electronic discovery that can then be sent to counsel at the time of the appointment.

Standard 3- Experts and Investigators: When appropriate, counsel shall request funds to retain an investigator to assist with the client's defense and/or shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecutor's case.

Does this standard change how the court grants requests for experts and investigators?

Maybe. Some plans anticipate hiring an Indigent Defense Administrator, a Managing Attorney or creating a Public Defender Office that would oversee the granting and use of the expert and investigator budgets.

Eventually, when Standard 5 is in effect, local systems will have to shift this responsibility away from the judiciary. Please contact your Regional Manager for assistance on this topic.

Will there be any training offered on how to interview experts/investigators?

Yes. Many training facilitators, such as CAP and CDAM, are already creating training programs directed at the use of experts and investigators. If you have any ideas or requests for training, please contact your regional manager.

Standard 4 - Counsel at First Appearance: Counsel will be assigned if the defendant's liberty is subject to restriction by a magistrate or judge. Counsel will also be appointed at pre-trial proceedings, plea negotiations, and at other critical stages.

I don't understand how our counsel at first appearance process is going to work. Is there court who has implemented this process who we can look to for guidance?

Yes! A few Michigan trial courts have begun the counsel at first appearance (CAFA) process. The MIDC documented a pilot project in Huron County in a detailed report, which is available on our website: <https://michiganidc.gov/policies-and-reports/>

We don't usually appoint counsel until after the arraignment. How will that change?

It depends on your funding units' compliance plan. Counsel will be appointed at arraignment, but that may be covered by an on-duty arraignment attorney, an attorney at the district court level, or the defendant may waive representation at this stage. At other critical stages, many courts are utilizing on-call attorneys or roster attorneys.

For arraignments, under what circumstances do we not need to provide an attorney?

Any time a client could face a loss of freedom (either immediately with jail time or future jail time via probation and possible subsequent violation including nonpayment) an attorney should be available to the defendant. A knowing and valid waiver of attorney may be made if the defendant desires.

Contact the MIDC Office or your Regional Manager for more information at info@michiganidc.gov or 517-657-3066